

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MARKUS HEITKOETTER, et al.,
Plaintiffs,
v.
KARL DOMM,
Defendant.

Case No. 1:22-cv-0368-AWI-BAM

**ORDER GRANTING PLAINTIFFS'
MOTION TO AMEND COMPLAINT**

ECF No. 26

Currently pending before the Court is a motion to amend the first amended complaint filed by Plaintiffs Markus Heitkoetter and Rockwell Trading Services, LLC (“Plaintiffs”) on December 22, 2022. (Doc. 26.) Defendant Karl Domm (“Defendant”) filed a statement of non-opposition to Plaintiffs’ motion to amend the first amended complaint. (Doc. 30.)

Based on the absence of opposition, the matter is deemed submitted on the record without the need for oral argument pursuant to Local Rule 230(g). Having considered the unopposed motion and the record in this case, Plaintiffs’ motion for leave to amend will be GRANTED.

DISCUSSION

Plaintiff’s motion to amend, which was filed prior to issuance of a Scheduling Order deadline, is considered under the Federal Rule of Civil Procedure 15 standard for amendment to the pleadings. *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992) (holding

1 that motion to amend filed after pretrial scheduling order deadline must satisfy the requirements
2 of Federal Rule of Civil Procedure 16). Rule 15(a) provides that a court “should freely give leave
3 [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). The United States Supreme Court
4 has stated:

5 [i]n the absence of any apparent or declared reason—such as undue delay, bad faith
6 or dilatory motive on the part of the movant, repeated failure to cure deficiencies
7 by amendments previously allowed, undue prejudice to the opposing party by virtue
of allowance of the amendment, futility of amendment, etc. —the leave sought
should, as the rules require, be “freely given.”

8 *Foman v. Davis*, 371 U.S. 178, 182 (1962). The intent of the rule is to “facilitate decision on the
9 merits, rather than on the pleadings or technicalities.” *Chudacoff v. Univ. Med. Center of S. Nev.*,
10 649 F.3d 1143, 1152 (9th Cir. 2011). Consequently, the “policy of favoring amendments to
11 pleadings should be applied with ‘extreme liberality.’” *United States v. Webb*, 655 F.2d 977, 979
12 (9th Cir. 1981).

13 Courts consider five factors in determining whether justice requires allowing amendment
14 under Rule 15(a): “bad faith, undue delay, prejudice to the opposing party, futility of amendment,
15 and whether the plaintiff has previously amended the complaint.” *Johnson v. Buckley*, 356 F.3d
16 1067, 1077 (9th Cir. 2004) (citation omitted); *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir.
17 1995) (citing *Western Shoshone Nat'l Council v. Molini*, 951 F.2d 200, 204 (9th Cir. 1991)).
18 These factors are not of equal weight as prejudice to the opposing party has long been held to be
19 the most critical factor in determining whether to grant leave to amend. *Eminence Capital, LLC*
20 *v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (“As this circuit and others have held, it is
21 the consideration of prejudice to the opposing party that carries the greatest weight”); *Jackson v.*
22 *Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990) (“Prejudice to the opposing party is the
23 most important factor.”). Absent prejudice, or a strong showing of any of the remaining factors, a
24 presumption exists under Rule 15(a) in favor of granting leave to amend. *Eminence Capital*, 316
25 F.3d at 1052.

26 Defendant has filed a statement of non-opposition to the motion to amend. Having
27 considered the moving papers as well as Defendant’s non-opposition, the Court finds that there
28 will be little prejudice to Defendant in permitting the amendment. The Court additionally finds

1 that Plaintiff has not unduly delayed in seeking to amend the complaint, the amendment is not
2 brought in bad faith, and there is no indication that such amendment is futile. Accordingly, leave
3 to amend will be granted.

4 **CONCLUSION AND ORDER**

5 For the reasons discussed above, IT IS HEREBY ORDERED that:

- 6 1. Plaintiff's Motion to Amend Complaint (Doc. 26) is GRANTED;
7 2. The Clerk of Court is directed to file the lodged Second Amended Complaint
8 (Doc. 26-2, Exhibit B at pp. 20-34); and
9 3. Defendant shall file an answer or other responsive pleading in compliance with the
10 Federal Rules of Civil Procedure and any relevant Local Rules following electronic service of the
11 Second Amended Complaint.

12 IT IS SO ORDERED.
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14 Dated: January 4, 2023

15 /s/ Barbara A. McAuliffe
16 UNITED STATES MAGISTRATE JUDGE
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